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In the Supreme Court of the United States

OCTOBER TERM, 1991

JOHNNY DUPREE, ET AL., APPELLANTS

v.

MIKE MOORE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether, under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, the Attorney General's preclearance of voting changes identified in a submission by a covered jurisdiction operates to preclear other changes made by the same legislation but not specifically identified in the submission.

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.[1]

STATEMENT

This case arises from the enactment by the State of Mississippi of a comprehensive revision to its education laws, which, *inter alia*, both repealed a former provision governing the modification of school dis-

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[1] In response to the Court's invitation, we are today also filing a brief expressing the views of the United States in *Greenville Public School District* v. *Western Line Consolidated School District*, No. 90-1861. That case presents the same substantive question as does the instant case, but presents in addition a jurisdictional issue not presented by the instant case. We have provided the parties in this case with a copy of our brief in No. 90-1861.

trict boundaries when territory is annexed by a city and enacted a new provision generally governing alterations of school district boundaries. The question presented is whether the repeal of the former provision was precleared pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

1. Mississippi cities are permitted by Miss. Code Ann. §§ 21-1-29 *et seq.* (1990), to annex territory located outside their boundaries by filing a petition in chancery court. Prior to 1986, the status of city school districts, in the event of such a municipal expansion, was governed by Miss. Code Ann. § 37-7-611 (1972). J.S. App. 107a-109a. Under Section 37-7-611, when a city annexed territory, the municipal school district automatically expanded to become coextensive with the city limits. In addition to this provision for automatic expansion of municipal school district boundaries, Section 37-7-611 and other provisions of Mississippi law also provided for alteration of municipal school district boundaries with the consent of the school boards involved.[2] The school board of a municipal school district is generally chosen by the city's elected governing body. Miss. Code Ann. § 37-7-203 (1990).[3]

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[2] Counties were treated differently from cities under Mississippi law. Prior to 1986, non-municipal school district boundaries could be altered by action of county boards of education, with the approval of a state education commission. See Miss. Code Ann. §§ 37-7-103, 37-7-113 (1972); J.S. App. 76a-77a; 90-1861 Pet. App. 87a-88a.

[3] Where the municipal school district includes territory outside the city limits, Mississippi law permits one or two extra school board members to be elected by the residents of the added territory, the number depending upon the proportion of the pupils accounted for by the added territory. Miss. Code Ann. § 37-7-203 (1990). Members of non-municipal school

2. In 1986, the State legislature enacted the Uniform School Law, S.B. No. 2117, ch. 492, omnibus legislation revising the entire state education code. Among the many changes effected by this bill, Section 47 specifically repealed Section 37-7-611—the statute that provided for automatic incorporation of annexed territory into municipal school districts—as well as 22 other provisions of state law. J.S. App. 75a.[4] In addition, Section 52 of the Uniform School Law amended Miss. Code Ann. § 37-7-103 (1972) to give the board of each school district—municipal or otherwise—authority to alter its boundaries, with the consent of any neighboring school board whose district boundaries would be affected by the change. J.S. App. 76a-77a. One of the effects of the repeal of Section 37-7-611 and the amendment of Section 37-7-103 was that, when a city now annexed neighboring territory, the municipal school district would expand into the annexed territory only with the consent of the school board governing that territory.

3. On July 22, 1986, the State of Mississippi sent the Uniform School Law to the Attorney General for

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boards are generally elected by county voters. Miss. Code Ann. § 37-7-207 (1990).

[4] In 1977, the state legislature had enacted legislation providing that, where muncipal annexations crossed county lines, incorporation of the annexed territory into the municipal school district would not occur absent consent of the affected neighboring school district. J.S. App. 4a-5a. The Attorney General, however, interposed an objection to the 1977 statute when it was submitted for preclearance in March, 1990. J.S. App. 27a. Although appellees argued in the district court that the 1977 legislation had been effectively precleared, the district court rejected that argument and no cross-appeal was noted. Accordingly, no issue concerning the 1977 legislation is before the Court.

preclearance under Section 5. J.S. App. 32a-46a. The State's submission included a letter from the state attorney general stating that the " 'Mississippi Uniform School Law of 1986' * * * is submitted * * * in its entirety." J.S. App. 35a. The letter continued: "For the sake of brevity, the submission will only set forth the particular sections which deal primarily with voting rights even though the complete act is submitted for review." *Ibid.*

Section 51.25(b) of the regulations governing Section 5 submissions provides that "[i]f the change affecting voting is not readily apparent on the face of the document provided * * * or is not embodied in a document," the submission must contain "a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting." 28 C.F.R. 51.25(b) (1986), J.S. App. 178a.[5] Accordingly, in a portion of the submission letter headed "28 C.F.R. 51.25 (b)," the State specifically described 13 of the 205 sections of the bill. J.S. App. 35a-41a.

Section 47 of the bill, which repealed Section 37-7-611, was not specifically described in the submission letter. The submission letter thus did not state that pre-existing law provided for automatic expansion of municipal school districts when a city annexed adjoining territory, nor did it address the effect of the Uniform School Law on such automatic, non-consensual expansions.

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[5] Substantially the same instructions have been in effect as guidelines since 1971. See 36 Fed. Reg. 18,186-18,190 (1971).

Section 52 of the bill was among the 13 sections specifically described. The submission letter stated that Section 52 provides that "the school board of any school district may * * * alter the boundaries of any such district" or "with the consent of the school board of the district involved may add to [its] school district any part of the school district adjoining same or may detach territory from such school district and annex same to an adjoining district." J.S. App. 37a. The submission letter explained that, under pre-existing law, a county board of education could "create, alter or abolish any school districts of such county, other than the municipal separate school districts." *Ibid.* Where a municipal school district was involved, the letter added that, under pre-existing law, "the county board of education with the consent of the board of trustees of the municipal separate school district involved may add to such municipal separate school districts any part of the county adjoining same." *Ibid.* The explanation of Section 52 thus explained the previous method for consensual expansion of municipal school districts, but did not mention the previous method for automatic expansion of municipal school district boundaries when the municipality annexes territory.

In addition to the letter, the State also included with its submission a certified copy of the bill and a looseleaf notebook entitled "Senate Bill Number 2117—Comparison of Current Law and New Law." J.S. App. 47a-106a (notebook); see J.S. App. 35a. The 467-page notebook contained the text of each provision of the Uniform School Law, together with photocopied pages containing provisions of prior state law, if any, that were amended by that provi-

sion. The text of Section 47 appeared in the enclosed bill and in the notebook, but the texts of the 23 provisions of law repealed by Section 47 were not included in the notebook. The text of Section 47 simply states that 23 cited provisions of state law—including Section 37-7-611—that "provide for the creation and operation of municipal separate school districts" are repealed. J.S. App. 75a.

On August 29, 1986, the State was informed by letter that the Attorney General of the United States did "not interpose any objection to the voting changes occasioned by Senate Bill No. 2117 (1986) as identified in your July 22, 1986, letter." J.S. App. 110a.

4. On December 30, 1987, the State sent the Attorney General of the United States a new document entitled "Submission of Chapter 492, Section 47; [Miss. Code Ann. § 37-7-611 (1972)] of the 1986 Laws of Mississippi." J.S. App. 112a (brackets in original). That submission noted that "[t]he major part of [the Uniform School Law], as it deals with the Voting Rights Act of 1965 * * * has already been precleared by the United States Justice Department on August 29, 1986." J.S. App. 115a.[6]

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[6] The 1987 submission letter—like the 1986 submission—included the boilerplate statements that "[i]n making this submission the State of Mississippi hereby expressly reserves and does not waive any and all objections it may have concerning whether the instant submission is subject to the preclearance requirements of Section 5." J.S. App. 114a; see J.S. App. 34a. Appellees Forrest County and the State of Mississippi assert that the State submitted Section 47 for preclearance in 1987 "[b]ecause of confusion regarding the language used by the [Attorney General of the United States] in its [*sic*] preclearance" of 1986. See Mot. to Dis. or Aff. 8. Aside from the boilerplate reservation of rights referred to above, however,

The submission went on to explain that Section 47 repeals Section 37-7-611, and to outline the nature of that change. Distinguishing Section 47 from Section 52, the submission noted:

> It is the automatic expansion of the school district which had been repealed by [Section 47]. The option to expand, however, is not forclosed [*sic*]. Section 52, of the Chapter 492 of the 1986 Laws of Mississippi (precleared by the United States Justice Department on August 29, 1986) provides that the school board of any school district may abolish such existing district or reorganize, change or alter the boundaries of any such school district.

J.S. App. 118a. On February 28, 1988, the Attorney General requested additional information with regard to the submission of Section 47. J.S. App. 123a-127a. The State responded almost a year later, by letter of January 27, 1989. J.S. App. 128a-136a.[7]

On March 31, 1989, the Attorney General interposed an objection to Section 47. J.S. App. 137a-140a. The Attorney General concluded that repealing the automatic annexation provision in Section 37-7-611 would be likely to "create a class of city voters (for the most part predominantly white) who will not reside in the city school system yet may vote

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no reference to any alleged confusion appears in the 1987 submission itself. The first time the State acknowledged any "uncertainty surrounding the Section 5 status of" Section 47 appears to have been in the State's request for reconsideration submitted to the Attorney General in January 1990. See p. 8, *infra*.

[7] This letter again acknowledged that the Attorney General had precleared in 1986 the "particular sections identified in our July 22, 1986 submission." J.S. App. 128a.

for the city governing body which, under Mississippi law, appoints the city school board." J.S. App. 139a. The Attorney General noted that the State had provided "no explanation for the establishment of such a political system which appears not only to have the potential to impact negatively on the influence of minority city school district residents but also to treat black voters differently than white voters." *Ibid.*

5. On January 12, 1990, the State formally requested the Attorney General to reconsider his objection. J.S. App. 141a-170a. In the request, the State contended for the first time that the entire 1986 statute had actually been submitted and precleared in 1986, and that the Attorney General lacked "authority * * * to grant limited preclearance" of a law "submitted in its entirety." J.S. App. 147a. The State claimed that, "[w]ith respect to Section 47, even though the repealed sections were not set out, they were sufficiently described as providing for the creation and operation of municipal separate school districts," J.S. App. 146a, and that the Attorney General's failure to object to Section 47 in August 1986 accordingly amounted to preclearance of that provision. J.S. App. 147a.

The State was advised by letter on May 25, 1990, that the Attorney General would not withdraw the objection. J.S. App. 171a-175a. In response to the State's contention that the change had necessarily been precleared in 1986, the letter noted relevant case law and stated:

> Section 5, as interpreted by the courts and our guidelines, plainly fixed the responsibility for identifying voting changes on the state, not the United States Attorney General, yet the state

> appears to be arguing * * * that the Attorney General should have uncovered voting changes of which the state itself seemingly was unaware at the time the prior submissions were made.

J.S. App. 173a.[8]

6. The City of Hattiesburg annexed neighboring territory in Forrest and Lamar Counties in 1989, after the enactment of the Uniform School Law. J.S. App. 2a. On February 23, 1990, residents and voters in the City of Hattiesburg filed this suit in United States District Court pursuant to Section 5 of the Voting Rights Act, naming as defendants the State of Mississippi and its governor and attorney general. J.S. App. 2a-3a. The purpose of the suit was to enjoin the enforcement of Section 47 of the 1986 Act, insofar as it repealed Section 37-7-611.[9] After the requisite three-judge court was convened, the two affected school districts (Lamar and Forrest

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[8] The letter also cited, without discussing, 28 C.F.R. 51.26(d) and 51.27, as in accord with the "well-established" requirement that a voting change must be submitted in an "unambiguous and recordable manner." J.S. App. 172a. 28 C.F.R. 51.27 provides that a copy of any repealed statute should be included with a Section 5 submission of the repealing legislation. That specific regulation was not in effect at the time of the State's submission of the Uniform School Law in 1986. See 28 C.F.R. 51.1 *et seq.* (1986). The regulations in effect in 1986 did, however, require the submitting jurisdiction to identify with specificity the voting changes for which preclearance was sought. 28 C.F.R. 51.25(b); see p. 4, *infra*.

[9] The complaint was also addressed to the effect of the 1977 effort to modify Section 37-7-611 on annexations by Hattiesburg prior to the 1986 enactment of the Uniform School Law. The district court's conclusion that the 1977 legislation had never been precleared disposed of that claim. See note 4, *supra*.

Counties) and their trustees intervened. J.S. App. 3a. The United States filed a brief as amicus curiae in support of appellants' claim that Section 47 had never been precleared and that the repeal of Section 37-7-611 could not be enforced.

7. On December 12, 1990, while this suit was pending, the Mississippi Supreme Court held in *Greenville Public School District* v. *Western Line Consolidated School District*, 575 So. 956 (Miss. 1990), see note 1, *supra*, that the Attorney General had in effect precleared the repeal of Section 37-7-611 when he precleared Section 52, the section providing for consensual alteration of school district boundaries. J.S. App. 3a. According to the court, "[e]ven assuming § 37-7-611 was not specifically repealed, it was implicitly repealed by [Section 52]." 90-1861 Pet. App. 14a. In the court's view, Section 52 was "a subsequent enactment covering a field of operation co-existent with [Section 37-7-611]" that "cannot by any reasonable construction be given effect while the prior law remains in existence because of irreconcilable conflict between the two acts." 90-1861 Pet. App. 14a. In such a situation, the court held that a "repeal * * * arise[s] by necessary implication from the enactment of a subsequent act." *Ibid.*

8. On April 2, 1991, the three-judge district court in this case held that the Attorney General had precleared the 1986 repeal of 37-7-611 and that the territory annexed by the City of Hattiesburg after 1986 was therefore not part of the City's school district. J.S. App. 1a-29a. The court recognized that the repeal of Section 37-7-611 was a "change in voting" within the scope of Section 5, because "[t]he vote of the City voters who reside in the municipal school district would be diluted by the vote of those residents

in the annexed area who remain a part of the county school district." J.S. App. 19a. But the court relied on four factors in concluding that the complete Uniform School Law—including Section 47—had been submitted under Section 5, and that the Attorney General's failure to interpose a timely objection to Section 47 therefore precleared that provision.

First, the district court relied on the State's representation in the 1986 submission letter that the Uniform School Law was being submitted for Section 5 preclearance "in its entirety." J.S. App. 20a, 24a; see J.S. App. 35a. The court found it significant that the State explained that it gave detailed discussions of particular sections that dealt "primarily" with voting rights, "even though the complete act is submitted for review." J.S. App. 24a; see J.S. App. 35a.

Second, the district court relied on the fact that the State's submission letter explained that the Act was "comprehensive," J.S. App. 24a, and "by its title alone, the act signalled a massive reorganization of various laws." J.S. App. 27a.

Third, the district court stated that it was "most important[]" that "the booklet explained the repeal of § 37-7-611 governing the creation and operation of municipal school districts." J.S. App. 24a.

Finally, the court relied on the State's discussion of Section 52 in the submission letter and the booklet. The court noted that the Uniform School Law "created uniformity among the school districts," J.S. App. 24a, and that Section 52 granted "jurisdiction to the school board of *any* school district to alter the boundaries of *any* such district by obtaining the consent of the adjoining school district involved." J.S. App. 25a.[10]

[10] The district court stated that its analysis of the materials submitted concerning Section 52 was "in accord with" the

The district court thus held that the submission was "complete and unambiguous," J.S. App. 27a, unlike the submissions at issue in *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 571 (1969), *United States* v. *Board of Comm'rs*, 435 U.S. 110 (1978), and *McCain* v. *Lybrand*, 465 U.S. 236 (1984). See J.S. App. 22a-24a. Accordingly, the district court concluded, the later effort by the Attorney General to deny preclearance to the repeal of Section 37-7-611 was of no effect. J.S. App. 27a.

DISCUSSION

The decision of the district court in this case was filed on April 2, 1991, two months before this Court's decision in *Clark* v. *Roemer*, 111 S. Ct. 2096 (1991). In *Clark*, the Court held that a State must "identify with specificity each change that it wishes the Attorney General to consider" in a Section 5 submission, 111 S. Ct. at 2104, and that "any ambiguity in the scope of a preclearance request must be resolved against the submitting authority," 111 S. Ct. at 2103. In our view, those principles were well established prior to *Clark* and lead ineluctably to the conclusion that the change in issue here—the repeal of Section 37-7-611 by the Uniform School Law—was not precleared when the Attorney General precleared the "voting changes * * * as identified in" the State's

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Mississippi Supreme Court's analysis, which relied on the proposition that Section 52 impliedly repealed "[a]ll conflicting statutes" and that the preclearance of Section 52 accordingly precleared the repeal of Section 37-7-611. J.S. App. 24a-25a. Nonetheless, the district court also stated that, because the submission was in its view "complete," it "need not decide whether § 37-7-611 was precleared by implication, due to the undisputed preclearance of [Section 52]." J.S. App. 27a n.7.

1986 letter. Because the district court did not have the benefit of this Court's decision in *Clark* at the time it decided this case, it would be appropriate to vacate the judgment of the district court and remand the case for reconsideration in light of *Clark*.

1. This Court has recognized, in a series of decisions culminating in *Clark*, that if the process envisioned by Section 5 is to work, submissions must be clear and specific. The voting change must be submitted "in some unambiguous and recordable manner." *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 571 (1969). As this Court explained in *McCain* v. *Lybrand*, 465 U.S. 236 (1984), the submission procedures for administrative preclearance "should be carefully construed to protect the remedial aims of the Act." *Id.* at 257. Those aims "would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him." *Id.* at 249 (quoting *United States* v. *Sheffield Bd. of Comm'rs*, 435 U.S. 110, 136 (1978)). The Court in *McCain* reemphasized the principle that "the preclearance procedures mandated by § 5 of the Voting Rights Act focus entirely on *changes* in election practices." 465 U.S. at 251 (emphasis in original). Thus, "[a] request for preclearance of certain identified changes in election practices which fails to identify other practices as new ones cannot be considered an adequate submission of the latter practices." *Id.* at 256-257.

The Court reaffirmed and elaborated on those principles in *Clark*. In *Clark*, as in *McCain*, the district court had held that certain voting changes made by earlier enactments and never submitted for preclearance were in effect precleared when the Attorney

General precleared later legislation incorporating the earlier changes. As in *McCain*, the documents accompanying submission of the later changes did not discuss or identify as non-precleared the changes made by the earlier enactments. The Court reversed, holding that "a submission pertains only to *identified* changes in that legislation" and that "any ambiguity in the scope of a preclearance request must be resolved against the submitting authority." 111 S. Ct. at 2103 (emphasis added). In particular, the Court explained that the district court had clearly erred, both in *McCain* and in *Clark*, in holding that the Attorney General had precleared the earlier, unidentified changes "because the information submitted was limited to election changes effected by [the later enactment]." *Ibid.* Only the changes that had been specifically identified by the State were effectively submitted to the Attorney General, and his preclearance thus operated only as to those changes.

The Court in *Clark* explained the rationale of the rule requiring the covered jurisdiction to identify with specificity voting changes that it intends to submit for preclearance. As the Court stated, "[t]he requirement that the State identify each change is necessary if the Attorney General is to perform his preclearance duties under § 5." 111 S. Ct. at 2104. In light of the thousands of submissions that the Attorney General must review each year, "Congress required each jurisdiction subject to § 5, as a condition to implementation of a voting change subject to the Act, to identify, submit, and receive approval for all such changes." [11] *Ibid.* To relax the requirement that

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[11] As we stated in our brief in *Clark*, in the years 1986-1990, the Attorney General had to review an average of more than 17,000 changes each year encompassed in more than 3500 submissions under Section 5. Br. 22 n.18.

the jurisdiction must identify the change being submitted would "add to the Attorney General's already redoubtable obligations the additional duty to research each submission to ensure that all earlier unsubmitted changes had been brought to light." *Ibid.* It would also "diminish covered jurisdictions' responsibilities for self-monitoring under § 5 and would create incentives for them to forgo the submission process altogether." *Ibid.*

2. This case is controlled by *Clark*. In its 1986 submission, the state affirmatively identified and discussed thirteen provisions of the omnibus school legislation. Those provisions were thereby submitted for preclearance, and the Attorney General's letter stating that he did "not interpose any objection to the voting changes occasioned by Senate Bill No. 2117 (1986) *as identified in your* July 22, 1986, letter," J.S. App. 110a (emphasis added), precleared the "identified" changes made by those thirteen provisions.

The voting change effected by Section 47—the repeal of the automatic annexation provision of Section 37-7-611—was not identified in the 1986 submission. The submission letter did not mention Section 47 or Section 37-7-611 at all. Nor did it include any information that would have put the Attorney General on notice either that Mississippi law had provided for automatic expansion of municipal school district boundaries or that the Uniform School Law eliminated that provision. To be sure, the submission letter in discussing Section 52 did explain the new method permitting alteration of school district boundaries with the consent of the school boards involved, and indicated that municipal school districts could make use of that method. But that discussion never stated that Mississippi law had previously provided for nonconsensual expansion of municipal school

district boundaries, nor did it state that the new method provided for in Section 52 would henceforth be the *sole* method for altering school district boundaries.[12]

The materials accompanying the submission similarly did not "identify with specificity," *Clark*, 111 S. Ct. at 2104—or identify at all—the voting change at issue in this case. The text of Section 47 simply cited 23 provisions of Mississippi law that were repealed and identified no voting change whatsoever. The minimal explanation provided in the text—that the repealed sections "provide for the creation and operation of municipal separate school districts," J.S. App. 75a—similarly does not refer to any voting change.

In short, the State's 1986 submission, when measured against the standards set out by this Court in *Clark*, did not include the repeal of Section 37-7-611, and neither the Attorney General's express preclearance of the voting changes "identified" in the submission nor his failure expressly to deny preclearance to the repeal of Section 37-7-611 operated to preclear that repeal. Moreover, even if it were thought that the submission was ambiguous in some degree, this Court in *Clark* made quite clear that " 'any ambiguity in the scope of the preclearance request' must be construed against the submitting jurisdiction." 111 S. Ct. at 2105 (quoting *McCain*, 465 U.S. at 257). That principle, too, compels the conclusion that the district court erred.

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[12] Nor does the text of Section 52, see J.S. App. 76a-77a, give any hint that its method of consensual alteration of school district boundaries would henceforth provide the sole method for alteration of such boundaries.

3. The factors relied on by the district court to support its conclusion that the repeal of Section 37-7-611 had been precleared are essentially irrelevant, as measured by *Clark*. The boilerplate statements in the submission letter that the Uniform School Law was submitted "in its entirety" and that "the complete act is submitted for review," J.S. App. 35a, do not identify any specific voting change, much less the repeal of Section 37-7-611, and thus have no bearing on the analysis of whether the repeal of that provision was submitted for preclearance.[13] Nor does the fact that the Uniform School Law was "comprehensive" and effected a "massive reorganization" alter the analysis. The Attorney General is far less able to identify the specific changes made by such comprehensive legislation than is the submitting jurisdiction itself. There is no basis for relaxing the requirements for Section 5 submission merely because the legislation being submitted is of such a comprehensive nature. On the contrary it would seem that the broader the legislation, the more critical it is that the State identify the changes it wishes precleared.[14]

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[13] In fact, the State could not have intended to submit the Uniform School Law "in its entirety," since most of its 203 sections have nothing to do with voting. For example, Section 120 of the Uniform School Law amended Miss. Code Ann. § 37-37-11 (1972) to establish a minimum number of school district audits to be performed each year and Section 138 amended Miss. Code Ann. § 37-41-27 (1972) authorizing the use of publicly-owned school buses for special events and during emergencies.

[14] The district court commented that 28 C.F.R. 51.35 (1986) provided that the Attorney General "shall request further information as is necessary from the submitting authority" if a submission does not satisfy the requirement of 28 C.F.R. 51.25(b) (1986) that it supply "a clear explanation of the change explaining the difference between the submitted change

The district court attempted to distinguish *McCain*—and appellees Forrest County and the State attempt to distinguish *Clark*, see Mot. to Dis. or Aff. 18-19—on factual grounds. J.S. App. 24a. The rationale of *Clark* and *McCain*, however, is equally applicable here. In those cases, the issue was whether the Attorney General should have recognized that the legislation before him assumed and built upon changes that had occurred earlier but had not been independently submitted. *McCain*, 465 U.S. at 252-253; *Clark*, 111 S. Ct. at 2104. In this case, the issue is whether the Attorney General should have recognized that the legislation before him included changes in addition to those identified in the submission letter. In all three cases, the district court decisions holding that the legislation at issue had been precleared are based on the premise that the Attorney General must independently examine and evaluate every provision in a law that incorporates some identified voting changes, at the risk of having found that his failure to object to the identified changes inadvertently precleared unidentified changes as well. Insofar as this Court's decision in *McCain* left any

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and the prior law or practice." J.S. App. 20a. The regulations are designed to address cases in which a submission provides sufficient information to inform the Attorney General that a change has been made, but insufficient information for him to rule on that change. The regulations do not suggest or imply that an ambiguous or vague submission—much less one that simply fails to identify a voting change at all, as did the State's 1986 submission here—is acceptable because of the Attorney General's authority to request additional information. As *Allen*, *McCain*, and *Clark* made clear, a jurisdiction must first properly submit a change. Then, the Attorney General must preclear, object, or ask for additional information. See also *United States* v. *Board of Comm'rs*, 435 U.S. 110, 136 (1978).

doubt that the premise of the district court's decision here was incorrect, that doubt was removed by *Clark*.[15]

4. Finally, insofar as the district court relied on the Mississippi Supreme Court's holding that the provision of a new method for alteration of school district boundaries in Section 52 of the Uniform School Law impliedly repealed Section 37-7-611, see note 10, *supra*, that reliance was misplaced.[16] Nothing

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[15] In *Woods* v. *Hamilton*, 473 F. Supp. 641 (D.S.C. 1979), cited by the district court, the State of South Carolina had submitted the 1975 Home Rule Act for preclearance. That Act contained three parts. 473 F. Supp. at 641-645. The Attorney General precleared two of them and registered no view as to the third part, which involved a transfer of powers to county governments. Later, a three-judge court held that the transfer provisions had been precleared by silence. There was no contention in *Woods* that the transfer of power provisions had not been brought to the Attorney General's attention, nor that those provisions had not been properly submitted to him. Instead, the Attorney General's failure to act as to those provisions was apparently based on uncertainty as to when a transfer of power provision constituted a change affecting voting. See 473 F. Supp. at 644-645. Cf. *Presley* v. *Etowah County Comm'n*, No. 90-711 (Jan. 27, 1992). The district court held that, if the change did require preclearance, the Attorney General's failure to object to it constituted preclearance. 644 F. Supp. at 645. Cf. *Morris* v. *Gressette*, 432 U.S. 491, 502-503, 507 n.24 (1977) (Attorney General's failure to act within 60 days on properly submitted voting change constitutes Section 5 preclearance of that change).

[16] The Mississippi Supreme Court also stated that it was "not obliged to defer to [the Attorney General's] interpretation of the Voting Rights Act when he has obviously applied the wrong regulations." 90-1861 Pet. App. 14a. The court was referring to the citation, in a 1990 letter from the Assistant Attorney General for the Civil Rights Division refusing to withdraw the objection to the repeal of Section 37-7-611, of

on the face of Section 52 or in the State's discussion of Section 52 in the submission letter suggests that that provision repealed Section 37-7-611. Nor does anything on the face of Section 52 or in the submission materials reflect the fact that Mississippi state law had previously provided for the automatic expansion of municipal school district boundaries, but that that provision was now repealed because Section 52 provided an alternative method for expansion of municipal school district boundaries by consent of the districts involved. Accordingly, even if Section 52 effected a repeal of Section 37-7-611 by operation of state law, that *repeal* was not submitted to the Attorney General in 1986 or reviewed by him in connection with the 1986 submission, and it was not precleared when he precleared the 1986 submission.

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a regulation requiring that the submitting jurisdiction include the text of repealed legislation in a Section 5 submission. J.S. App. 172a. The specific regulation was not in effect in 1986 when the State initially submitted the Uniform School Law for preclearance. See note 8, *supra*. The bare citation to the regulation was intended to illustrate the general requirement of an unambiguous submission. *Ibid.* The text of the letter made quite clear that the failure properly to submit the repeal of Section 37-7-611 in 1986 was not due to a failure to comply with a not-yet-promulgated regulation. The letter based its conclusion that the repeal had not been properly submitted in 1986 on the fact that "submission of the Uniform School Law * * * identified specific voting changes by [that] statute[], but [did not] contain[] any reference to the voting change [made by repealing Section 37-7-611.]" J.S. App. 172a.

CONCLUSION

This Court should vacate the decision of the three-judge court and remand to that court for reconsideration in light of *Clark* v. *Roemer*, 111 S. Ct. 2096 (1991).

Respectfully submitted.

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